IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 24914 of 2004

Between:

M. Aruna, \W/o. Prasad,
Allur Mandal, Nellore District.

..... PETITIONER

AND

1 The Joint Collector, Nellore.
2 The Revenue Divisional Officer, Kavali, Nellore District.
3 The Mandal Revenue Officer, Allur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order, direction or writ, more particularly one in the nature of writ of Mandamus declaring the order of the 2nd respondent passed in Rc.J.6386/2004 dt. 18.12.2004 suspending the authorization of the petitioner as illegal, arbitrary, violation of principles of natural justice and contrary to the provisions of A.P. Public Distribution System Control order, 2001 and also further declare the action of the 1st respondent in not passing any orders on the stay petition filed along with the appeal as illegal and arbitrary and set-aside the order of the 2nd respondent and consequently direct the respondents to supply the essential commodities to the petitioner as usual and pass such order or orders.

Counsel for the Petitioner: MR.V.SUDHAKAR REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

Petitioner is a fair price shop dealer of Allurpet village, Allur mandal, Nellore district. When she was denied supplies of essential commodities, she approached this Court by filing W.P.No.23573 of 2004. The writ petition was disposed of on 17.12.2004 directing that the respondents shall supply the essential commodities to the petitioner as long as her authorization is in force.

The petitioner was served with an order dated 18.12.2004, whereunder her authorization was suspended, on certain allegations. She preferred an appeal before the first respondent, together with an application for stay. It is represented that the appellate authority has not passed any order in the stay petition and in the meanwhile, respondents 2 and 3 are taking steps to make alternative arrangements.

Heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

The learned counsel for the petitioner submits that the impugned order was passed with an anterior date, after the order of this Court in W.P.No.23573 of 2004 was produced before the second respondent. It is not possible to verify the correctness of this allegation, at this stage.

Ordinarily, once an appeal, together with an application for stay, is preferred, this Court does not interfere, unless the appellate authority exercises its discretion. However, in this matter, the fact that the petitioner was denied the supplies of essential commodities even before an order of suspension was passed, discloses that all is not well in the matter. A perusal of the order of

suspension discloses that major discrepancies in the stock pointed out against the petitioner related to the year 2003-04. It is not as if the petitioner was required to explain. All the allegations are unilateral in nature.

One strong factor, which weighs with this Court to enable the petitioner to function as a fair price shop dealer, is that the suspension is ordered almost as a measure of penalty and not as a measure pending enquiry. In his order, the second respondent did not state that the suspension is pending enquiry. Therefore, the procedure prescribed under clause 5(4) of the A.P. Public Distribution System Control Order, 2001 ought to have been followed. Since the same is not followed, the order is *prima facie* illegal.

For the foregoing reasons, this writ petition is disposed of directing that the order of suspension dated 18.12.2004 shall remain stayed and the petitioner shall be entitled to function as a fair price shop dealer, till the first respondent disposes of the appeal. There shall be no order as to costs.

30.12.2004

Note:

Issue CC by tomorrow.

(BO)

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To

1 The Joint Collector, Nellore.
2 The Revenue Divisional Officer, Kavali, Nellore District.
3 The Mandal Revenue Officer, Allur, Nellore District.

4 Two C.Cs. to the Government Pleader for Civil Supplies, High Court Buildings, A.P., Hyderabad, (OUT).

5 Two C.D.Copies.